

ACTION
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Department of State

INCOMING
TELEGRAMPAGE 01
ACTION AF-10

MBABAN 01549 02 OF 02 151339Z

5370 AF0946

ACTION OFFICE BLS-01
INFO AF: S-01 /002 A1INFO OCT-01 ADS-00 INR-10 CIAE-00 NSAE-00 SSO-00 L-03
INRE-00 ICAE-00 SPRS-02 /026 W

-----004337 151340Z /44/60

O 141600Z MAY 81
FM AMEMBASSY MBABANE
TO SECSTATE WASHDC IMMEDIATE 2089
INFO FBIS WASHDC IMMEDIATE

CONFIDENTIAL SECTION 02 OF 02 MBABANE 1549

CORRECTED COPY (TEXT PARA 5)

ANTENNAE IN A REASONABLE INCONSPICUOUS MANNER."
 (THERE IS APPARENTLY LINGERING SUSPICION THAT WE
 WILL TRANSMIT OR THAT GOVERNMENT MAY COME UNDER
 CRITICISM FOR PERMITTING US TO DO SO. THEREFORE,
 RESTRICTING LANGUAGE TO EMPHASIZE RECEIVING NATURE OF FBIS
 OPERATIONS WAS DESIRED.)

--SUBPARA 6: REPLACE "REASONABLE" WITH "TWELVE HOURS"
 AND AFTER "UNITED STATES EMBASSY" ADD "OR SUCH
 LESSER PERIOD AS MAY BE MUTUALLY AGREED UPON BY BOTH
 PARTIES." (THIS ADDITION, PROMPTED BY DUJON'S PENCHANT
 FOR PRECISION, IS ACTUALLY MORE FAVORABLE TO US THAN DRAFT
 TEXT.)

--SUBPARA 7: ADD, "SUBSEQUENT TO SUCH NOTICE, THE
 SWAZILAND GOVERNMENT MAY REQUEST THE FBIS TO LIMIT ITS
 ACTIVITIES TO THOSE ADMINISTRATIVE PROCEDURES REQUIRED TO
 CLOSE THE BUREAU." IGOS WAS OBVIOUSLY CONCERNED THAT
 BUJEAU COULD KEEP UP NORMAL OPERATIONS DURING TERMINATION
 PERIOD, INCLUDING REPORTING TO WASHINGTON AND PUBLIC
 CONSUMERS MATERIAL DETRIMENTAL TO SWAZILAND. WE REJECTED
 ORIGINAL SUGGESTION FROM DUJON THAT SWAZI OFFICIAL BE
 AUTHORIZED TO CENSOR MATERIAL REPORTED TO WASHINGTON
 DURING THIS TERMINATION PERIOD. WE FELT, SINCE THE PURPOSE
 OF THE TERMINATION PERIOD WOULD BE TO CLOSE DOWN IN AN
 ORDERLY FASHION, IT WOULD BE BETTER TO ACCEDE TO A POSSIBLE
 SWAZI REQUEST THAT REPORTING ACTIVITIES BE STOPPED.
 FINDING THIS FORMULATION TOOK UP THE MAJOR PART OF
 THE MEETING, AND EMBASSY HOPES VERY MUCH THAT IT WILL
 BE ACCEPTABLE TO WASHINGTON. WILLIAMS AND I BELIEVE
 IT IS ESSENTIAL TO FIND FACE SAVING DEVICE FOR DUJON.
 OTHERWISE, WE WILL HAVE TO RAISE DISCUSSIONS TO HIGHER
 POLITICAL LEVEL AGAIN.)

4. NEXT STEP: PERMSEC SHABANGU WOULD LIKE TO PRESENT
 REVISED DRAFT TO CABINET NO LATER THAN TUESDAY, MAY 19
 SO THAT ACTION CAN BE TAKEN AT CABINET MEETING ON FOLLOWING
 TUESDAY, MAY 26. AS MENTIONED ABOVE, BOTH DPM'S OFFICE
 AND EMBASSY HOPE AGREEMENT CAN BE SIGNED BEFORE MY SCHEDULED
 DEPARTURE ON JUNE 5.

5. REQUEST APPROVAL OF DRAFT TEXT AS REVISED ABOVE
 BY OB MAY 19 AND CIRCULAR 175 AUTHORIZATION ASAP.
 MATHERON

State Dept. review completed

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INCOMING
TELEGRAMPAGE 01 MBABAN 01549 01 OF 02 151338Z 5367 AF0945
ACTION AF-100MBABAN 01549 01 OF 02 151338Z 5367 AF0945
LONG AFTER TERMINATION OF FORMATIVE STAGE.)ACTION OFFICE BLS-01
INFO AF:S-01 /002 A1INFO OCT-01 ADS-00 INR-10 CIAE-00 WSAE-00 SSO-00 L-03
INRE-00 ICAC-00 SPRS-02 /026 V

-----004324 151339Z /44/60

O 141600Z MAY 81
FM AMEMBASSY MBABANE
TO SECSTATE WASHDC IMMEDIATE 2088
INFO FBIS WASHDC IMMEDIATE

CONFIDENTIAL SECTION 01 OF 02-MBABANE 1549

(CORRECTED COPY - E.O. LINE AND PARA 5)

E.O. 12065: GDS 5/14/87 (MATHERON, RICHARD C), OR-M
TAGS: PINT, WZ, US
SUBJECT: FBIS INSTALLATION

REF: (A) STATE 123077, (B) STATE 89788

1. CONFIDENTIAL-ENTIRE TEXT

2. SUMMARY: AMBASSADOR AND PERMANENT SECRETARY IN DEPUTY PRIME MINISTER'S OFFICE, BOTH ACCOMPANIED BY LAWYERS, HAVE ARRIVED AT MINOR REVISIONS IN DRAFT TEXT OF FBIS AGREEMENT WHICH SHOULD BE ACCEPTABLE TO RESPECTIVE GOVERNMENTS. DURING MEETING, GOS SHOWED DETERMINATION TO GET THIS MATTER "WHICH HAS DRAGGED ON LONG ENOUGH OUT OF THE WAY," TO USE THE PERHSEC'S WORDS. ACTION REQUEST: WASHINGTON APPROVAL BY 08 LOCAL TIME MAY 19 AND CIRCULAR 175 AUTHORIZATION ASAP. END SUMMARY

3. VERY MUCH APPRECIATE REFTEL A. AID LEGAL ADVISOR WILLIAMS AND I MET TO DISCUSS APPROVED DRAFT (REFTEL B) MORNING MAY 14 WITH DEPUTY PRIME MINISTER'S PERMANENT SECRETARY A.R. SHABANGU AND SENIOR CROWN COUNSEL A.S. DUJON. FROM TENOR OF SHABANGU'S REMARKS, IT IS CLEAR THAT GOS DESIRE TO MOVE AHEAD TO COMPLETE AGREEMENT PRIOR TO MY SCHEDULED JUNE 5 DEPARTURE AND TO DO SO IN SPIRIT OF CORDIAL RELATIONS PRESENTLY EXISTING BETWEEN OUR TWO COUNTRIES. NOT UNEXPECTEDLY, DUJON TOOK SOMEWHAT MORE LEGALISTIC APPROACH. HE POINTED OUT SEVERAL TIMES THAT, SINCE THE AGREEMENT IS "DESTINED TO LAST FOR MANY YEARS", IT IS IMPORTANT THAT AGREEMENT PIN DOWN POINTS WHICH MIGHT POSSIBLY BECOME ISSUES SHOULD NATURE OF RELATIONS CHANGE SOMEWHAT IN THE FUTURE. THERE FOLLOW PROPOSED CHANGES IN TEXT WORKED OUT AT THIS MORNING'S MEETING WHICH REFLECT BOTH SPECIFIC CHANGES DESIRED BY GOS AND OUR OWN COUNTER MODIFICATIONS. EACH PROPOSED CHANGE IN TEXT IS FOLLOWED BY EXPLANATION OF ISSUE.

--SUBPARA 3: AFTER "PARTICULARLY IN THE BUREAU'S FORMATIVE STAGES" ADD "WHICH WOULD NOT BE FOR MORE THAN EIGHTEEN MONTHS." DUJON EXPRESSED TWO CONCERNS: (1) THAT ANY LARGE INFLUX OF TEMPORARY STAFF AFTER THE FORMATIVE STAGE COULD SIGNAL A CHANGE IN THE SCOPE OF ACTIVITIES AND (2) FAILURE TO HIRE LOCAL STAFF COULD BE EXCUSED ON THE GROUNDS THAT WE WERE STILL IN FORMATIVE STAGE. FOR THAT REASON, GOS FEELS IT WOULD BE BETTER TO SPELL OUT LIMIT TO LENGTH OF FORMATIVE STAGE BASED ON EXPERIENCE ELSEWHERE. EMBASSY PICKED 18 MONTHS AS ARBITRARY FIGURE. WASHINGTON MAY WANT TO MODIFY IT, PREFERABLY DOWNWARD. BOTH SHABANGU AND DUJON ASSURED US GOS WOULD, OF COURSE, PERMIT TDY PERSONNEL TO VISIT BUREAU IN SAME MANNER AS THEY DO OTHERWISE TO OTHER COMPONENTS OF EMBASSY,

--SUBPARA 4: BETWEEN "UNITED STATES PERSONNEL" AND "AND MEMBERS OF THEIR FAMILIES" ADD "ASSIGNED TO THE BUREAU, NOT EXCEEDING FOUR IN NUMBER." NEW SENTENCE WOULD, THEREFORE, READ, "ALL UNITED STATES PERSONNEL ASSIGNED TO THE BUREAU, NOT EXCEEDING FOUR IN NUMBER, AND MEMBERS OF THEIR FAMILIES WILL BE AFFORDED THE SAME PRIVILEGES AND IMMUNITIES AS OTHER ADMINISTRATIVE AND TECHNICAL STAFF OF THE EMBASSY." (GOS CONSIDERS THAT THIS IS NECESSARY TO ENSURE THAT THE GRANT OF PRIVILEGES IS LIMITED TO THE PERMANENT STAFF MENTIONED IN SUBPARA 3. IT WAS AGREED THAT SHOULD THERE BE ANY NEED TO INCREASE THE AMERICAN STAFF BEYOND FOUR IN THE FUTURE, THIS COULD BE HANDLED BY SIMPLE EXCHANGE OF LETTERS. ALTHOUGH EMBASSY DOES NOT SEE NECESSITY OF THIS ADDITIONAL CLAUSE, IT WAS NOT FELT WORTH ARGUING ABOUT.)

--SUBPARA 5: REWRITE TO READ, "THE FBIS WILL OPERATE OUT OF SPACE TO BE RENTED IN A COMMERCIAL BUILDING IN MBABANE AND WILL ONLY EMPLOY ROOFTOP OR GROUND LEVEL RECEIVING

51 FBIS


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The proposed agreements do not involve matters requiring further review under the National Environment Policy Act of 1969, 42 U.S.C. §4321 (1976 ed.) or under Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions) of January 4, 1979, 44 Fed. Reg. 1957. The agreements would constitute international agreements within the meaning of the Case Act, 1 U.S.C. §112b, as amended, and the text of the exchange of notes and any implementing arrangements would be transmitted to the Congress once concluded.

For the above reasons, it is the opinion of this office that the proposed agreement can properly be entered into by the U.S. Ambassador in Swaziland as an executive agreement pursuant to existing legal authority and the Secretary of State's authority for the conduct of the foreign relations of the U.S. (22 U.S.C. §2656 (1978)).



Nancy H. Ely
Assistant Legal Adviser
for African Affairs

Drafted:L/AF:NHEly:emb
x23736:5/15/81

Clearance: L/T - *CW* CWillson